

II. THE LAW: LEGAL INCENTIVES & STRATEGIES FOR IMPLEMENTATION

Tax Incentives: Overview

To a great degree, public policy has supported the use of tax-based incentives to foster historic preservation activities. Tax incentives generally are associated with three major tax categories:

- Income tax
- Property tax
- Charitable giving or restrictive covenants

Provisions in federal and Montana law address these three types of incentive categories; summaries follow. However, it should be noted that the information provided here only serves to *introduce* the reader to the general nature of each incentive. Tax law detailed both in the Internal Revenue Code and Montana statute is subject to frequent amendment. Applicability to specific projects should be reviewed with the State Historic Preservation Office and with professionals familiar with tax law.

Federal Historic Preservation Incentives

Federal Tax Credits for Historic Rehabilitation

Section 251 of the Tax Reform Act of 1986 (Sections 46 and 48 of the Internal Revenue Code) permits an owner or long term lessee to elect a 20 percent tax credit on qualified rehabilitation expenditures incurred after January 1, 1987 in connection with a *certified rehabilitation*. A tax credit provides the property owner with a reduction on his or her federal income tax due. In order to be eligible for the credit, *buildings must be used for income producing purposes including industrial, commercial or rental residential uses*. Further the structure must be “substantially rehabilitated” with the qualified expenditures exceeding the greater of \$5,000 or the adjusted basis of the building (the appraised value of the existing building minus the value of the land, minus any depreciation already taken, and any capital improvements already made). Funds must be spent within a 24-month period or over a 60-month period for phased projects.

Prior to the initiation of a “Tax Act” project, the subject building must be certified as to its National Register status: whether the property is listed individually on the Register, is a part of a National Register district or is under consideration in a pending nomination. Properties must fall into one of these three certification categories to be eligible for the 20 percent credit. The owner must carefully document the existing structure prior to the start of rehabilitation through photographs and provide detailed information as to the nature of the proposed work. This information is reviewed by the Montana State Preservation Office and/or local preservation officers using the Secretary of Interior’s Standards for Rehabilitation (see Chapter 1) and then submitted to the National Park Service for approval.

Upon the completion of the work, final certification is required to determine if the work was undertaken in the manner approved by the preservation officer. Persons wishing to take advantage of this program should work closely with their state and/or local preservation officer(s) as well as their accountant throughout the rehabilitation process to assure appropriate and timely results.

Under the 1986 Act, a 10 percent income tax credit is available for the rehabilitation of older buildings that are not “historic”. Owners who have properties within registered historic districts and who wish to elect this credit must obtain certification that their buildings are not historic.

Investment Tax Credit for Low Income Housing

Section 252 of the Tax Reform Act of 1986 (Internal Revenue Code Section 42) provides for an investment tax credit for acquisition, construction or rehabilitation of qualifying units of low-income housing. A 9 percent tax credit per year for 10 years is allowed for each unit of low-income housing acquired, constructed or rehabilitated without other federal subsidies; a 4 percent tax credit for 10 years is available for units involving federal subsidies or tax-exempt bonds. Qualifying rehabilitation under this provision must meet tests relating to cost per unit, number of units occupied by individuals with incomes below area median income, and a 15-year compliance period.

Preservation Easements

A preservation easement is an interest in real property, deeded to a qualifying organization or government entity. It is a legal instrument that a property owner can use to ensure the protection and preservation of the historical character of his or her property. The owner retains use of the entire property but it is under the protective stewardship of the qualifying organization. Easements are generally granted in perpetuity. They are officially recorded with the property deed and remain in place as the entire property changes ownership over time. A qualifying organization is one that has the capacity to accept the responsibilities associated with the deed of easement.

The granting of an easement may result in substantial tax benefits. The Tax Reform Act of 1986 retained the provisions that permit income and estate tax deductions for charitable contributions of partial interests in historic property. (Refer to sections 170(f) and (h) of the Internal Revenue Code.) The owner of the property is allowed to take a charitable deduction on the difference between the value of the property before and after the donated easement. In order to qualify for income tax benefits, the property must be listed in or eligible for listing in the National Register of Historic Places or in an historic land area as defined by the Internal Revenue Service. In addition, the qualifying organization must be tax-exempt under Section 501 (3) of the Internal Revenue Code. In some cases, in order to obtain an income tax benefit, some minimal provision for public access to the property may be required.

Historic property owners may establish preservation easements before death to minimize federal estate tax. Because of the restrictions placed on the property, an historic easement may result in lower taxes if the historic use value is lower than the fair market value without an easement. At this time there are no qualifying organizations in the State of Montana, that are directing their efforts to the acquisition of historic preservation easements. However, a number of conservation easement organizations will sometimes consider an easement on an historic property in conjunction with a larger land-based transaction (see below Chapter IV). Also, from time to time local and state governments will accept easements on historic buildings.

Montana Historic Preservation Incentives

Investment Tax Credit

Montana’s statute allows taxpayers to take a percentage of the federal rehabilitation investment tax credit, granted under IRS rules. This percentage cannot exceed 5 percent of the value of the federal credit and in no tax year may the total of all tax credits taken exceed \$500.

Property Tax Abatement Program

In 1989, Montana established a property tax abatement program for the restoration, rehabilitation, expansion and new construction of certified residential and commercial properties located within National Register districts as well as properties listed individually on the National Register of Historic Places. If the property undergoing restoration, rehabilitation, or new construction meets the design and certification process established by a local review board then the following is allowed:

- The property may receive a tax abatement during the construction period, not to exceed 12 months.
- For up to five years following completion of the construction, the property may receive a tax abatement of up to a total 100 percent of taxes due to the increased value of the property over the five-year period. (For example, the property owner may take a tax abatement allowance of 20 percent of the tax due for each of the five years.)

The tax abatement is only for mills levied for local government and school districts. State levies must still be paid. The state legislation enables local governments to establish their own programs.

Conservation Easements

Montana property tax laws provide for incentives associated with the granting of conservation easements. If a property has a restrictive easement that limits its potential use, Montana law states that the property tax will be determined on the basis of the restricted purposes. For example, an agricultural property on which there is an easement would not experience an increase in taxes if the land adjacent is being subdivided for residential or commercial development. Montana law does not require that the easement be granted in perpetuity, but rather for a minimum of 15 years. (See MCA 76-6-209). This provision can also be applied to historic properties that are included in a deed of easement for conservation purposes under Montana law.

Local Preservation Incentives

Certified Local Government Program

The National Historic Preservation Act of 1966, as amended, established a nationwide program for assistance to preservation. Since 1985, local governments have been encouraged to adopt programs that enable the creation of partnerships between state and local government to provide preservation and planning assistance under the Act. This partnership in turn enables local governments to participate directly in furthering the national preservation program.

Local governments wishing to participate must establish a historic preservation commission and a program meeting federal and state standards. A local government that has been determined by the State Historic Preservation Officer to meet these requirements becomes a "Certified Local Government", (CLG), and shares with other CLG's in a portion of the federal grant administered by the SHPO and set aside specifically for the CLG's. A major incentive of the CLG Program is the additional pool of grant funds State Historic Preservation Offices may set aside to fund local CLG programs.

The CLG program, through its requirements, directs local governments to engage in comprehensive preservation planning. It encourages partnerships among agency representatives, property owners and local preservation professionals. In Montana, the program has been designed to encourage and expand local involvement in preservation issues to assure that.

- Historic preservation issues are understood and addressed at the local level and are integrated into the

local planning and decision-making processes at the earliest possible opportunity;

- Local interests and concerns are integrated into the identification, evaluation, nomination and protection process of the Montana State Historic Preservation Office;
- Information concerning local historic preservation issues is provided to the State Historic Preservation Office and to the public;
- Local historic preservation review commissions are established in cities and towns where they do not exist and are reorganized, if necessary, where they already exist;
- Existing historic, architectural and prehistoric inventory information is made available to communities to use in identifying and defining community and neighborhood development and conservation goals;
- Expertise in historic preservation is identified and available on a local level to assist local government in developing and implementing a locally developed historic preservation plan.

Currently the state has 18 CLG's. For a list of the Montana's CLG's and Community Preservation Officers, see Chapter IV, Program and Technical Assistance.

Local Preservation Ordinances

Local communities may pass ordinances that govern the management of historic properties, districts and associated programs. Local ordinances are required to enable a local government to become a Certified Local Government and to establish an historic preservation commission. Ordinances can also be used to impose land use and design standards that protect historic buildings and the uses that are associated with those buildings. For example, in Bozeman a local ordinance was passed creating an historic mixed-use district. This action recognizes that traditional zoning, which tends to separate uses, is not appropriate to districts where a multitude of uses, such as residential, commercial and industrial, might have existed side by side for generations.

Local Historic Preservation Plans

Historic Preservation Plans (HPPs) are often used by communities (as well as federal and state land management agencies), to provide greater vision to the management of cultural resources under their jurisdiction. Much like comprehensive land use plans, historic preservation plans provide a vision for overall community development. HPPs can be used to assist in developing plans for the rehabilitation of historic districts for housing and commercial use. They can be used to evaluate the effect of a particular federal, state or local undertaking on historic resources. HPPs can assist in a community's overall economic development program in the areas of heritage tourism and business recruitment. They can help in the preparation of education programs that incorporate local history in their curriculum.